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INTEGRATION OF THE HUMAN RIGHTS OF WOMEN AND THE GENDER PERSPECTIVE: VIOLENCE AGAINST WOMEN

Written statement*/ submitted by the International Centre for Human Rights and Democratic Development, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

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*/ This written statement is issued, unedited, as received from the submitting non-governmental organization(s).

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ENG

The Women's International War Crimes Tribunal 2000 on Japan Military Sexual Slavery

1. As we are entering the 21st century women all over the world are taking stock of their achievements over the past century and determining what still needs to be addressed in order for the whole of humanity to enter into this new century with a true sense of hope and resolve.

2. Beijing + 5 illustrated that principles ensuring women's equality and human rights for women are still difficult to win. However, we achieved much. The most important issue is to ensure that these principles are implemented at the international level and at the national levels. For this, we have to rely on the commitments of States who have signed the various declarations and conventions.

3. In December 2000, in Tokyo, the organizers of the Women's International War Crimes Tribunal on Japan Military Sexual Slavery reminded the State of its responsibilities. Organized by Asian women and human rights organizations and supported by international NGOs, the Tribunal's objectives were to shed light on the nature of the crimes committed against the "comfort women" of Asia and to identify steps to be taken by the Japanese government. It also aimed to end impunity for wartime sexual violence committed against women and to prevent such crimes in the future.

4. In the last decade, Asian women survivors of the Second World War began to break over 50 years of silence to demand an apology and compensation for the atrocities they suffered under Japanese Military Sexual Slavery during the wars in the 1930s and 1940s in the Asia Pacific region. The courage of many of these older women made it possible for other survivors to break away from isolation and humiliation and speak the truth in the hopes of obtaining justice before they passed away.

5. In seeking justice for themselves they raised the hope of current women war victims to expect that justice will also reach them. With justice comes dignity, regaining a sense of self and starting to be a useful citizen in one's community again. This is beneficial to all of society. Sexual violence against women is all too common even today and takes systemic proportion in times of war. The International War Crimes Tribunals for the Former Yugoslavia and for Rwanda have acknowledged that rape is an act of torture, an act of genocide, a war crime, a crime against humanity. Gender persecution has been properly taken into account in the rules and procedures of the International Criminal Court. However, to this day, whether in the ad hoc International War Crimes Tribunals or in national courts, sexual violence is all too rarely charged. Justice for "comfort women" holds the hope for justice for current crimes against women. The Commission should seek the opportunity of the Women's International War Crimes Tribunal Judgement to remind Japan to do the honourable thing and recognize its state responsibility.

6. This Tribunal was convened because of a denial of justice to "comfort women". The Summary of Findings presented on December 12, 2000 by the presiding Judge Gabrielle Kirk McDonald, former President of the International War Crimes Tribunal for the Former Yugoslavia, states that under general international law "a state is internationally responsible for any wrongful act that is attributable to it and that has done damage to then legitimate interests of

others. A state commits an internationally wrongful act when it acts in violation of an applicable rule of international law. The state of Japan has acted in violation of both its treaty obligations and obligations under customary international law. An act in violation of a state's international obligations but which is lawful under its internal law is not thereby rendered lawful in international law."

7. The Tribunal also noted that "Japan had violated treaty obligations including the 1907 Hague Convention Respecting the Laws and Customs of Law on Land, the 1921 International Convention for the Suppression of the Traffic in Women and Children, and the 1930 International Labour Organization (ILO) Convention Concerning Forced Labour. It is also violated norms of customary international law, including those prescribed in the 1907 Hague Convention and the 1926 Slavery Convention. Further, in the 1951 San Francisco Peace Treaty, Japan accepted the Judgement of the International Military Tribunal for the Far East (IIMTFE)."

8. The Tribunal recognizes that after the Second World War, Japan signed a number of treaties, including the San Francisco Peace Treaty, the Settlement between Netherlands and Japan, the Treaty on Basic Relations between Japan and the Republic of Korea, and the Agreement on the Settlement of Problems concerning Property and Claims Between Japan and the Republic of Korea. The Tribunal found that the Peace Treaties are not applicable in the current context as states cannot agree by treaty to waive the liability of another state for crimes against humanity.

9. Two reports stemming from this body have stated that abduction and systematic rape of women and girl children in the case of "comfort women" clearly constituted an inhumane act against the civilian population and a crime against humanity. The Special Rapporteur of the UN Sub-Commission on Military Sexual Slavery, Ms. Gay J. McDougall, in her 1998 report on Systematic rape, sexual slavery and slavery-like practice during armed conflict submitted (E/CN.4/Sub2/1998/13), concludes that the Japanese Government remains liable for grave violations of human rights and humanitarian law, violations that "amount in their totality to crimes against humanity." Prior to Ms. McDougall's report, the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, issue a 1996 report on her mission to the Democratic People's Republic of Korea, the Republic of Korea and Japan on the issue of military sexual slavery in wartime (E/CN.4/1996/53/Add.1). She recommended that Japan pay compensation to individual victims of Japanese military sexual slavery according to principles outlined by the Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on the right to restitution, compensation and rehabilitation for victims of grave violations of human rights and fundamental freedoms.

RECOMMENDATIONS

10. The Commission should seize the opportunity of the Women's International War Crimes Tribunal Judgement to remind Japan to do the honourable thing and recognize its state responsibility.

11. As stated by the Judges at the Women's War Crimes Tribunal in Tokyo on December 12, 2000: "The state of Japan's deliberate resistance to fully acknowledge its wrongdoing has perpetuated the shame and silence, inflicting indescribable pain upon the survivors and depriving them of the possibility of living in peace." Yet, as noted by the Judges, it is incumbent on the

Japanese government to "restore the dignity" of the survivors. We know of no greater promotion and defense of human rights than that of restoring human dignity to a victim.

12. The international community could not render a better service to the victims and to Japan than to accept the Final Judgement of the Women's War Crimes Tribunal as an official document of the 57th session of the United Nations Commission on Human Rights.

13. As we enter into the 21st century, women all over the world need a sign that States cannot only craft strong principles for women's equality but that they can also act on those principles. Giving the survivors of the comfort stations system a sense of justice is to give all women hope for the future.